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**State of Vermont**  
**Vermont Department of Education**  
120 State Street  
Montpelier, VT 05620-2501

## **MEMORANDUM**

**TO:** Superintendents, Principals and Heads of School

**FROM:** Mark D. Oettinger, General Legal Counsel  
Vermont Department of Education

**DATE:** July 21, 2010

**RE:** **(1) Educator Reporting Requirements (Child Abuse and Neglect; Vulnerable Adult Abuse, Neglect and Exploitation; and Educator Licensing); and**  
**(2) Access to Child and Adult Abuse Registries**

This is my annual reminder of the duties of educators to report abuse and neglect of children and vulnerable adults, and to report educator misconduct that could result in suspension or revocation of educator licenses. I have also included, at the end of this memorandum, information about gaining access to the child and adult abuse registries maintained within the Agency of Human Services for the purposes of your employment searches.

With respect to educator reporting requirements, there are essentially three categories: (1) reporting suspected abuse or neglect of children to the Department for Children and Families (hereinafter "DCF"), (2) reporting suspected abuse, neglect or exploitation of vulnerable adults to the Department of Disabilities, Aging and Independent Living, and (3) reporting educator misconduct to the Commissioner of Education for the purposes of initiating a licensing investigation. Each will be explained below. Please remember that some of the conduct that falls within these categories might also fall within other policies you have adopted (sexual harassment under 16 V.S.A. §565, "conduct unbecoming a teacher" under 16 V.S.A. §1752(c), *etc.*). While you should not ignore these other policies if such situations arise, this reminder is exclusively about the above three categories of educator reporting requirements.

### **Reports of Child Abuse and Neglect**

33 V.S.A. §4913(a) requires abuse and neglect reporting by, among other professionals, psychologists, school teachers, nurses, school superintendents, school librarians, school principals, school guidance counselors, mental health professionals and social worker, any other individual who is regularly employed by a school district, or who is contracted and paid by a school district to provided student services for five or more hours per week during the school year.

The specific statutory requirement is that any one of the above-enumerated professionals "who has reasonable cause to believe that any child has been abused or neglected shall report [to DCF] or cause a report to be made [to DCF] in accordance with the provisions of section 4914 of this title within 24 hours." 33 V.S.A. §4913(a). Persons who are not mandatory reporters may report or cause a report to be made. 33 V.S.A. §4913(b). Whether or not one is a mandatory reporter, a person who files such a report in good faith has immunity from any criminal or civil liability. 33 V.S.A. §4913(c). Failure of a mandatory reporter to report can result in prosecution and a fine of \$500.00. 33 V.S.A. §4913(e)(1). "A person may not refuse to make a report....on the grounds that making the report would violate a privilege or disclose a confidential communication." 33 V.S.A. §4913(f).

As we have strongly recommended in the past, reporters should not delay in fulfilling their responsibilities under the above statute. It is not the job of the reporter to conduct a thorough investigation, or to come to a conclusion that abuse or neglect occurred, or to weigh the consequences to the educator or the students of reporting. "Reasonable cause to believe that any child has been abused or neglected" does not mean that the reporter must be convinced that abuse or neglect occurred. Rather, the reporter need only suspect that abuse or neglect might have occurred. Any doubts the employee may have shall be resolved in favor of reporting the suspicion. To report suspected abuse or neglect of a child contact the DCF Centralized Intake unit at 1-800-649-5285.

If you should have any questions about the interpretation of the above law, or whether particular circumstances might fall within its ambit, please contact the DCF Centralized Intake unit at 1-800-649-5285. If you would like training on this subject for yourself or your faculty and staff, please contact the Chief of the Special Investigations Unit at DCF at (802) 241-2131.

### **Reports of Abuse, Neglect and Exploitation of Vulnerable Adults**

There is an additional statutory requirement for reporting abuse and neglect, in this case dealing with abuse and neglect of "vulnerable adults." See 33 V.S.A. §§6901-6904. A "vulnerable adult" is a person over the age of 18 with some form of disability as described in §6902(14). The list of mandatory reporters is expanded to include, in addition to those professionals enumerated above in the child abuse reporting requirements, school bus drivers, school aides, and school employees or contractors who work regularly with students. The report must be made within 48 hours of when the mandatory reporter "knows of or has received information of abuse, neglect or exploitation of a vulnerable adult or [when the mandatory reporter] has reason to suspect that any vulnerable adult has been abused, neglected or exploited." 33 V.S.A. §6903(a). The report is to be made to the Commissioner of the Department of Disabilities, Aging and Independent Living (the toll-free number is 1-800-564-1612, the regular number is 802-241-2345). Because high schools invariably serve students with disabilities over the age of 18, please keep this reporting requirement in mind as well.

### **Reports of Educator Misconduct to the Commissioner of Education**

Educator misconduct can have a devastating impact on students, their families, the school community, and the reputation of all educators and schools in general. Title 16 V.S.A. §1699 allows "an individual who has reasonable cause to believe a licensee has engaged in unprofessional conduct or is incompetent may, and a superintendent who has reasonable cause to believe a licensee has engaged in unprofessional conduct or is incompetent **shall** submit a written

report to the commissioner concerning allegations of unprofessional conduct or incompetence about a licensee.”

Causes for licensing action are listed in 16 V.S.A. §1698 and include the following:

(1) Unprofessional conduct which means:

(A) Grossly negligent conduct or greater, on or off duty, that places a student or students in meaningful physical or emotional jeopardy, or conduct that evidences moral unfitness to practice as an educator.

(B) Conviction for a criminal offense in which the underlying circumstances, conduct, or behavior, by gross negligence or greater, places a student or students in meaningful physical or emotional jeopardy, or conviction of a crime that evidences moral unfitness to practice as an educator.

(C) Conviction of grand larceny under 13 V.S.A. § 2501 or embezzlement as defined in subchapter 2 of chapter 57 of Title 13, provided charges were brought after July 1, 2006.

(D) Conviction of a crime charged after July 1, 2006, which involves fraudulent misrepresentation, dishonesty, or deceit, including conviction for any of the following: 13 V.S.A.

§§ 1101, 1102, 1103, 1104, 1106, 1107, 1108, 3006, or 3016, provided that conviction under 13 V.S.A. §§ 2002, 2502, 2561, 2575, 2582, and 2591, if the value or amount involved is \$500.00 or less, shall not be considered a conviction under this subdivision unless it is part of a larger pattern of dishonesty, deceit, or fraud.

(E) A pattern of willful misconduct or a single egregious act of willful misconduct in violation of duties and obligations of the position.

(F) Falsification, misrepresentation, or misstatement of material information provided in connection with the application for or renewal or reinstatement of a license or endorsement.

(G) With respect to a superintendent, the failure to maintain the confidentiality and privileged status of information provided pursuant to subsection 1700(c) and subdivision 1708(f)(3) of this title.

(2) Incompetence, which means the inability or incapacity to perform the duties and competencies required by the license.

While it is understandable that you, as administrators, would want to investigate any of the allegations in the above three categories of reporting requirements, it is vital that you fulfill your legally-required reporting duties as soon as possible so that objective, trained investigators can become involved immediately. Not only does this protect children, but it also can protect educators or others in cases where false reports are made (which can be very damaging to educators, parents or others against whom false reports of abuse or misconduct are sometimes made). The sooner the information is reported, and appropriate investigations are commenced by personnel affiliated with law enforcement or DCF, the value of the evidence gathered will be sustainable. It also cannot be stressed enough that fulfilling one of the reporting requirements mentioned above does not fulfill

all of them. For example, reporting to the Commissioner of Education suspected sexual activity between a teacher and a minor student does not relieve you of reporting such allegations to DCF. And, in any case where you believe a crime has been committed, you can, and should call the law enforcement authorities immediately.

### **Access to Child and Adult Abuse Registries**

The Department of Education strongly advises school districts to run Child Protection Registry and Adult Abuse Registry checks on *all* prospective school employees, effective immediately. Districts should also run checks for school contractors who may have unsupervised contact with schoolchildren. Each registry, maintained by the Department for Children and Families and the Department of Aging and Independent Living, respectively, contains a list of persons who were found to have engaged in behavior that might indicate they should not have unsupervised contact with schoolchildren. It is the intent of the Vermont Legislature that all prospective school employees be checked against both abuse registries, in addition to undergoing a standard criminal record check.

At this time, it is unclear when it will become state law that prospective school employees are checked against the abuse registries. The intent of the Vermont Legislature was that the effective date should be December 31, 2010. However, as a result of legislative drafting oversights during the 2010 session of the Vermont General Assembly, some legal interpretation suggests it became law on July 1, 2010; other interpretations suggest the provision was removed from the law. At the very least, school districts should expect this law to become effective sometime in the next 12 months. The issue arose because Act 108 of 2010 (S.161) amended 16 V.S.A. § 255 without unambiguously incorporating changes to that section of law that were enacted as part of Act 1 of 2009. Regardless, the most prudent course of action for any school district would be to begin checking the abuse registries for prospective school employees immediately.

More information regarding the registries can be found at this Web link: [http://dcf.vermont.gov/child\\_protection\\_registry](http://dcf.vermont.gov/child_protection_registry). Note that a person is not categorically barred from school employment if he or she appears on an abuse registry; the registries are intended to provide information to prospective employers regarding a person's history working with vulnerable people.

An online system is available to check both registries simultaneously. Information to subscribe to this service can be found at <http://www.ahsnet.ahs.state.vt.us/abc/SubscriberHome.cfm>.

Thank you for your ongoing efforts on behalf of Vermont's children.